UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/449,782	11/26/1999	JAMES MCKEETH	MICS:0194	6698

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EXAMINER
BROPHY, MATTHEW J

ART UNIT	PAPER NUMBER
2191	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	09/449,782	MCKEETH, JAMES
	Examiner	Art Unit
	MATTHEW J. BROPHY	2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>16 June 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

        Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ They raise the issue of new matter (see NOTE below);

    (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>1-21 and 23-25</u>.

    Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

    See continuation sheet.

12. ☐ Note the attached Information *Disclosure* Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Wei Zhen/
Supervisory Patent Examiner, Art Unit 2191

U.S. Patent and Trademark Office

PTOL-303 (Rev. 08-06)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20080627

In Remarks, Applicant Argues:

1. Buxton does not disclose a "command line utility" as recited by independent claims 1, 15, and 21 Applicant strongly objects to the Examiner's parsing of the term "command line utility," as recited independent claims 1, 15, and 21, into the term "utility." In justifying this interpretation, the Examiner stated: "Examiner reminds the applicant that each claim is to be given its broadest reasonable interpretation... [w]hile examiner understands the distinction that applicant attempts to make here, Examiner believes the term "utility", when given its broadest reasonable interpretation is anticipated by the Buxton patent." Final Office Action, page 18. As stated above, Applicant reminds the Examiner that the claims are to be given their broadest reasonable interpretation, not their broadest possible interpretation. While it may be possible to interpret a "command line utility" as a "utility," Applicant asserts that one of ordinary skill in the art would interpret the term "command line utility" as an entire element and would interpret the modifier "command line" as further describing the term utility as the term "command line utility" has a commonly understood meaning in the art. See In re Cortright ("any interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach." (Emphasis added)). Additionally, in further support of the interpretation of "command line utility" as "a utility executable from the command line prompt", Applicant notes that in the Office Action mailed September 11, 2006, the Examiner stated that the "accepted meaning" of the term "command line utility" is "a utility that is executed from the command line prompt." Office Action mailed September 11, 2006, page 4. Applicant also notes that, despite the Examiner's admission as to the definition of a "command line utility" in an earlier Office Action, the claim was further rejected under 35

   Serial No. 09/449,782 Amendment and Response to Final Office Action mailed April 16, 2008 Page 10 U.S.C. § 112 as indefinite. In the Pre-Appeal Brief Request for Review filed on July 23, 2007, Applicant traversed the § 112 rejection. In response to the Pre-Appeal Brief Request for review, the panel reopened prosecution, and the § 112 rejection was withdrawn in the next Office Action mailed October 17, 2007. Thus, Applicant has clearly demonstrated that the term "command line utility," as a whole, meets the requirements under § 112. Applicant asserts that separating the term "command line" from the tem "utility" is inconsistent with the 35 U.S.C. § 112 rejection and Applicant's successful traversal. Thus, based on the broadest reasonable interpretation of the term "command line utility," the interpretation of the term by one of ordinary skill in the art, and the prosecution history of the present application, Applicant asserts that the term "command line utility" should be considered as a whole and is not reasonably interpretable as merely a "utility." Further, as previously argued, Buxton does not discloses a "utility," or a "command line utility" as recited in independent claims 1, 15, and 21. Buxton discloses "OLE libraries" that are defined as "system-level services" that call a "WIN 32 API." Buxton, col. 8, lines 6-8. Applicant asserts that there is a clear difference between a service and a utility, especially the "command line utility" recited in independent claims 1, 15, and 21. Further, as known to those of ordinary skill in the art and as stated in Buxton, API's are "application program interfaces" which are also quite different than a utility and a "command line utility." As they are described in Buxton, neither "application program interfaces" nor "system-level services" are "executable from a command line prompt," and thus cannot be considered a "command line utility." Additionally, even if Buxton disclosed a "utility," it does not disclose either "command line utility" or "invoking, by an application, a call of command line utility, the application providing an identifier in the call of the command line utility" as recited in independent claim 1, 15, and 21. The Examiner also cited the phrase "command line interpreter" in Buxton and the "invoking of the APIs (i.e. utilities) seen in Buxton". Final Office Action, page 18. Contrary to the Examiner's assertion, Buxton discloses a "command line interpreter" as a means for implementing a user interface, not for invoking the API's. Id. at col. 8, lines 45-52. As stated above, the APIs are invoked by the "system level services", i.e., the OLE libraries in Buxton. Id. at col. 8, lines 8-12. Mere disclosure of a "command line interpreter," such as used to implement the user interface of Buxton, cannot anticipate the "command line utility" or "invoking, by an application, a call of command line utility, the application providing an identifier in the call of the command line utility" as recited in the present claims.

   Examiner's Response:
   Examiner respectfully disagrees. Regarding Applicant's remarks with regards to characterization of the term "command line utility" Examiner has interpreted the "command line utility" of applicant's claims to be a utility based on applicant's claims "wherein the command line utility is a utility executable from a command line prompt". As taught by both the Hill reference, and Applicant's Admitted Prior Art (hereinafter AAPA) a "command line utility" as described is a well-known utility in the art (See e.g. Hill, Page 6, "CMD.EXE"). The "command line interpreter" of Buxton is further relied on to show that a command line is used in the component system of Buxton (though not explained in detail). In addition, the Buxton patent, in combination with the other cited references, teaches "storing the command line utility output in system storage at a location identified by the identifier" as Hill and the AAPA teach the output from a command line utility (e.g. Hill Page 9 "most console application and commands generate output...") and Buxton teaches the storing...in a system storage at a location identified by the identifier (Buxton, e.g. Col. 8, Lines 7-11 storing in a registry location which is identified by a registry key).

In Remarks, Applicant Argues:

2. Qureshi does not disclose storing of information in a location "identified by an identifier" as recited by independent claims 1, 15, and 21 The Examiner stated that Qureshi discloses "storing of information in a location 'identified by an identifier'...it more discloses a registration routine via system calls to store an identifier in the registry (Col. 3, Lines 26-46)." Applicant respectfully disagrees with the Examiner' s assertion. In that portion of Qureshi cited by the Examiner, Qureshi does not mention the terms "identifier," or any derivation thereof. Qureshi, col. 3, lines 26-46. Qureshi refers to the storing of "configuration information" in a registry by a registration routine. Id. Applicant notes that the "registration routine" is provided by a "registration DLL." Id. at col. 8, lines 18-20. Such a registration DLL is not a "command line utility," as a DLL is a "dynamic linked library," e.g., a library of routines for use by programs. Applicant is unable to find any other descriptions in Qureshi that could anticipate the claim feature cited above. In another portion, Qureshi mentions identifying a "key entry to be assigned." Id. at col. 6, lines 43-46. Qureshi states: "It]he key entry to be assigned is identified by a quoted character string or by the default key entry designator "@ "... [f]ollowing the identification of the key entry is the assignment operator "=" which is, in turn, followed by a specific value to assign to the key entry." Id. Qureshi is referring to a file that contains the "configuration information" to be stored in the registry. As best understood, this file appears to be prepopulated with "configuration information" for the application executing the registration routine from the registration DLL. This is far different than an "identifier" that is provided in the call of a "command line utility" as recited by independent claims 1, 15, and 21. While the "configuration information" is identified as "key entry" and "key entry values" in the file, there does not appear to be any "output" from a utility or a "command line utility" identified by these identifiers.

   Examiner's Response:
   Examiner again respectfully disagrees. The registry key of Qurshi, similar to that of Bruxton, is interpreted to be equivalent to the identifier of applicant's claims. (e.g. Col. 1, Lines 24-31: "The configuration information in the registry is organized into hierarchical keys and associated key entries. There are currently six predefined root keys in the registry: "HKEY.sub.-- CLASSES.sub.-- ROOT," "HKEY.sub.--

CURRENT.sub.-- USER," "HKEY.sub.-- LOCAL.sub.-- MACHINE," "HKEY.sub.-- USERS," "HKEY.sub.-- CURRENT.sub.-- CONFIG," "HKEY.sub.-- DYN.sub.-- DATA." These six root keys define six main categories under which sub-keys can be defined. Sub-keys can themselves contain further levels of sub-keys…"). The examiner agrees that this key is used in Quershi to store "configuration information", however, in view of Hill and the AAPA as discussed above, combine to render obvious the "application providing an identifier in the call (e.g. Quershi, Col. 4, Lines 2-7) of the command line utility (See e.g. Hill, Page 6, "CMD.EXE")".

In Remarks, Applicant Argues:
3. Hill does not disclose a "system storage" as recited by independent claims 1, 15, and 21 Independent claims 1, 15, and 21 each recite storing the output of the command line utility in a "system storage". Applicant asserts that Hill does not disclose this "system storage." In rejecting the clam element cited above, the Examiner stated: Specifically, the command redirection taught in Hill does not teach redirection to a 'temporary file', the file of Hill is not temporary. Instead the file of hill, which is stored on a computing system anticipates the "system storage" of the current claim limitation. Finally, it is noted that the applicant's argued novelty "without the 'need to create a temporary file" appears nowhere in the claim language and therefore is not required by the claim. Final Office Action, page 21. Applicant asserts that the "system storage" of independent claims 1, 15, and 21 is not anticipated by the pipe command disclosed in Hill. As stated in the specification of the present Application, the system storage is a "system-wide storage location" that is "available to all user applications and is, furthermore, maintained by operation of the underlying operating system." Application, page 3. Applicant asserts that a file created by the pipe command cannot meet this description. Indeed, Applicant discussed the use of the pipe command and the corresponding file in the Background of the present Application. In the Background, Applicant stated that conventional techniques pipe output from the command line utility to a temporary file. Id. at page 1. While Applicant notes that the pipe command does not necessarily create a temporary file, as stated in the Background, "[s]ound programming practice calls for the destruction/removal of the temporary file created." Id. Additionally, the Background section discusses disadvantages with the pipe command and associated file, such as lack of "file creation privileges," "the disk the application has access to if full," the file name "may already by in use," the PC may be "disk-less," and "maintenance of temporary files is left to the calling application." 12
Serial No. 09/449,782 Amendment and Response to Final Office Action mailed April 16, 2008 Page 13 Id. at pages 1-2. Thus, Applicant has clearly identified in the Application the difference between the pipe command and redirection to a file and the "system storage" of independent claims 1, 15, and 21. Further, the Examiner stated the "argued novelty 'without the need to create a temporary file' appears nowhere in the claim language and therefore is not required by the claim." Final Office Action, page 21. Applicant's recitation of the language "without the need to create a temporary file" is simply a direct quotation of the Examiner' s own characterization of the present Application. In the Office Action mailed October 17, 2007, the Examiner stated the following: "Applicant claims novelty in providing a mechanism by which an application program may obtain output from a command line utility without the need to create a temporary file." Office Action mailed October 17, 2007, page 8. Applicant notes that the Examiner was using the characterization to justify a rejection under 35 U.S.C. § 103. To the extent that the Examiner maintains a rejection under 35 U.S.C. § 103, Applicant respectfully requests that the Examiner's statements regarding the characterization of Applicant' s invention remain consistent. If the Examiner objects to this characterization, Applicant respectfully requests that the Examiner refrain from using such a characterization in making the rejection.

Examiner's Response:
1.   In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the system storage is a "system-wide storage location" that is "available to all user applications and is, furthermore, maintained by operation of the underlying operating system.") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
In addition, with regards to the "system storage" argued here, while the examiner does not necessarily agree with the applicant's characterization, examiner also points to e.g. the registry system of Bruxton as described previous (Bruxton e.g Col 8, Ln 7-11 and Col. 14, Line 20-28).

In Remarks, Applicant Argues:
4. None of the cited references disclose "retrieving" or "causing the application to retrieve" as recited by independent claims 1, 15, and 21 Applicant respectfully asserts that the Examiner has not asserted the claim elements "retrieving, by the application, the command line utility output from the system storage at the location identified by the identifier" recited by claim 1, "cause the application to retrieve the command line utility output in system storage at the location identified by the identifier" as recited by claim 15, and "the application to retrieve the command line utility output from the location identified by the identifier" recited by claim 21. In responding to the previous Office Action, the Examiner stated that "[a]lso, the retrieving the command line utility output has been anticipated bye Buxton (see Col. 10, lines 8- 13
Serial No. 09/449,782 Amendment and Response to Final Office Action mailed April 16, 2008 Page 14 10)." Final Office Action, page 23. Applicant is unable to determine where in Buxton, including the passage cited by the Examiner, Buxton discloses the claim features cited above. The portion of Buxton cited by the Examiner states: "each OLE control has a subkey under the CLSID interface that OLE libraries 230 use to find out information about the OLE control." Buxton, col. 10, lines 8-10. While Applicant agrees that the OLE libraries disclosed in Buxton are retrieving information from a registry, Applicant asserts these OLE libraries, even if used in the context of an application, are not retrieving any "command line utility output" stored in the "system storage" and "identified by the identifier." Further, Applicant asserts that the Examiner' s characterization of OLE libraries as an "application" that retrieves the output of a command line interpreter is inconsistent to the Examiner's earlier assertion that the OLE libraries anticipate a "utility" or a "command line utility." The OLE libraries, e.g. system-level services, cannot be both a "utility" and an "application" that retrieves information stored by the "utility."
Examiner's Response:
Examiner again respectfully disagrees. Regarding "retrieving" or "causing the application to retrieve" Examiner again refers to Col. 10, Lines 8-10 of Bruxton which teach the retrieving of OLE control information using the registry key (i.e. Identifier). While the OLE control information is admittedly not the same thing as "command line utility output" (which is obvious over e.g. Hall, Page 6), the retrieving taught by Bruxton, in view of Hill and AAPA renders the claim as a whole obvious.

In Remarks, Applicant Argues:

5. Deficiencies of the Combination In responding to Applicant's arguments in the previous response, the Examiner, citing KSR, stated: The use of the hill reference in overcoming the shortcomings of AAPA, Would have been obvious to one of ordinary skill in the art at the time of the invention, as described above, as the improvement of resource efficiency is a well-known market demand such as described in the KSR ruling above. Final Office Action, page 23. While Applicant admits that KSR does mention "market demand," the "market demand" factor is discussed in the context of not limiting the obviousness determination to a teaching, suggestion, or motivation to combine test. Further, KSR does not diminish or remove the dangers of hindsight, and in fact reiterates such dangers: A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. See Graham, 383 U. S., at 36 (warning against a temptation to read into the prior art the teachings of the invention 14

Serial No. 09/449,782 Amendment and Response to Final Office Action mailed April 16, 2008 Page 15 in issue and instructing courts to guard against slipping into the use of hindsight' " (quoting Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co., 332 F. 2d 406, 412 (CA6 1964))). KSR, 82 U.S.P.Q.2d at 1397. Therefore, Applicant continues to assert that the Examiner's assertion is conclusory and an impermissible use of hindsight. Applicant notes in the initial response to Applicant' s traversal of the combination, the Examiner stated that the combination is an efficient use of resources. In the above rejection, the Examiner stated that the combination is obvious because an "efficient use of resources" is a "market demand." Applicant objects to the Examiner's assertion that piping the output of a script command to a registry edit command is obvious because it is an efficient use of resources. The Examiner has not responded to Applicant' s argument that the combination is conclusory and only possible because of the use of impermissible hindsight. Applicant believes that simply pointing to Applicant's described advantages in Applicant's own Application does not provide the objective analysis required in an obviousness determination. The assertion of an "efficient use of resources" as obvious would obviate any combination and would render any obviousness determination merely cursory and remove Applicant's ability to respond. Further, although the Examiner stated "use of the Hill reference in overcoming the shortcomings of AAPA, Would have been obvious to one of ordinary skill in the art at the time of invention," Applicant points out that the pipe command and a redirection file are discussed in the Background section of the present Application as having specific disadvantages. Application, page 1. As stated above, neither the redirection nor piping commands disclosed in Hill allow piping to a system storage location such as a registry. Thus, Applicant asserts that Hill, which discloses the pipe command and redirecting to a file, does not offer any techniques for overcoming those very same shortcomings described in AAPA.

Examiner's Response:

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).